

§ 2568.90

43 CFR Ch. II (10–1–14 Edition)

over a hearing to establish the facts of your use and occupancy.

(3) The ALJ will evaluate all the written evidence and oral testimony and issue a decision.

(4) You can appeal this decision to the Interior Board of Land Appeals according to 43 CFR part 4.

AVAILABLE LANDS—GENERAL

§ 2568.90 If I qualify for an allotment, what land may BLM convey to me?

You may receive title only to:

(a) Land that:

(1) Is currently owned by the Federal government,

(2) Was vacant, unappropriated, and unreserved when you first began to use and occupy it,

(3) Has not been continuously withdrawn since before your sixth birthday,

(4) You started using before December 14, 1968, the date when Public Land Order 4582 withdrew all unreserved public lands in Alaska from all forms of appropriation and disposition under the public land laws, and

(5) You prove by a preponderance of the evidence that you used and occupied in a substantially continuous and independent manner, at least potentially exclusive of others, for five or more years. This possession of the land must not be merely intermittent. “Preponderance of evidence” means evidence which is more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows that the fact you are trying to prove is more likely a fact than not.

(b) Substitute land explained in 43 CFR 2568.110.

§ 2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?

You cannot receive an allotment containing any of the following:

(a) A regularly used and recognized campsite that is primarily used by someone other than yourself. The campsite area that you cannot receive is that which is actually used as a campsite.

(b) Land presently selected by, but not conveyed to, the State of Alaska. The State may relinquish up to 160 acres of its selection to allow an eligi-

ble Native veteran to receive an allotment;

(c) Land presently selected by, but not conveyed to, a Native corporation as defined in 43 U.S.C. 1602(m). A Native corporation may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR 2650. Any such relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection;

(d) Land designated as wilderness by statute;

(e) Land acquired by the Federal government through gift, purchase, or exchange;

(f) Land containing any development owned or controlled by a unit of government, or a person other than yourself;

(g) Land withdrawn or reserved for national defense, other than the National Petroleum Reserve-Alaska;

(h) National Forest land; or

(i) Land selected or claimed, but not yet conveyed, under a public land law, including but not limited to the following:

(1) Land within a recorded mining claim;

(2) Home sites;

(3) Trade and manufacturing sites;

(4) Reindeer sites and headquarters sites;

(5) Cemetery sites.

§ 2568.92 [Reserved]

§ 2568.93 Is there a limit to how much water frontage my allotment can include?

Yes, in some cases. You will normally be limited to a half-mile (referred to as 160 rods in the regulations at 43 CFR part 2094) along the shore of a navigable water body. If you apply for land that extends more than a half-mile, BLM will treat your application as a request to waive this limitation. As explained in 43 CFR 2094.2, BLM can waive the half-mile limitation if it determines the land is not needed for a harborage, wharf, or boat landing area, and that a waiver would not harm the public interest.